

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

GAIL C. KYTTA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:20-cv-00105-RLY-MPB
)	
AQUITY SOLUTIONS, LLC,)	
KERRY PELLETIER,)	
)	
Defendants.)	

**REPORT AND RECOMMENDATION RECOMMENDING KERRY PELLETIER BE
DISMISSED WITHOUT PREJUDICE UNDER RULE 4(m)**

On November 30, 2021, this Court issued an Order to Show Cause, which ordered pro se Plaintiff Gail C. Kytta to show cause why this action against Kerry Pelletier should not be dismissed without prejudice for lack of service in accordance with Rule 4(m) of the Federal Rules of Civil Procedure. ([Docket No. 43](#)). Ms. Kytta was given until December 28, 2021, to file a response. No response was filed. (*Id.*). The record shows that on June 10, 2020, the Court granted Ms. Kytta's motion to proceed *in forma pauperis* and issued process to Kerry Pelletier in the manner specified by Rule 4(d) at the address provided by Ms. Kytta. ([Docket No. 7](#)). The Court advised that it "does not vouch for the accuracy of this information. Plaintiff ultimately is responsible for providing accurate information (name and address) for service of process." (*Id.* at ECF p. 2; [Docket No. 8](#)). On September 4, 2020, the Court received a Mail Return to Sender; Unable to Forward Notice for Kerry Pelletier. ([Docket No. 13](#)). Ms. Kytta was given notice of this failure no later than November 30, 2021 ([Docket No. 43](#)). Rule 4(m) provides that "[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or its own after notice to the plaintiff—must dismiss the action without prejudice against that

defendant or order that service be made within a specified time." [Fed. R. Civ. P. 4\(m\)](#). Ms.

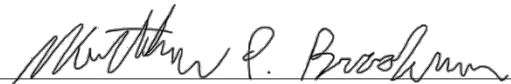
Kytta has been given notice and has not shown good cause. The Magistrate Judge hereby

RECOMMENDS that Kerry Pelletier be dismissed from this action without prejudice.

Any objections to the Magistrate Judge's Report and Recommendation shall be filed with the Clerk in accordance with [28 U.S.C. § 636\(b\)\(1\)](#). Failure to file timely objections within fourteen days after service shall constitute waiver of subsequent review absent a showing of good cause for such failure.

SO RECOMMENDED.

Dated: 1/10/2022



Matthew P. Brookman
United States Magistrate Judge
Southern District of Indiana

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